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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,841	08/02/2001	Carl C. McAdams	BEA920010012US1	8625
23441	7590	10/19/2004	EXAMINER	
LAW OFFICES OF MICHAEL DRYJA 704 228TH AVENUE NE PMB 694 SAMMAMISH, WA 98074			LANE, JOHN A	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/921,841

**Applicant(s)**

MCADAMS, CARL C.

**Examiner**

Jack A Lane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) \*  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

1. This Office action is responsive to the amendment filed 09/08/2004. Claims 1-20 are presented for examination. Any objections or rejections made in the previous office action not specifically repeated below are withdrawn.

**The examiner requests**, in response to this Office action, support be shown for language added to any original claims on amendment and any new claims. That is, indicate support for newly added claim language by specifically pointing to page(s) and line no(s). in the specification and/or drawing figure(s). This will assist the examiner in prosecuting the application.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 19, the claim language “wherein the medium is one of a recordable data storage medium and a modulated carrier signal” is unclear. Signal waves, air waves etc. are not articles of manufacture. The program (i.e. function descriptive language represented as bits/bytes) is an article of manufacture, however, a modulated carrier signal is not. A modulated carrier signal is not a storage device. A carrier signal maintains a signal for a small amount of time then

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it is lost if not properly received. A voltage pulse maintains a logic 1 or 0 representing a bit as long as voltage is applied, however, the pulse itself is not a storage medium. The modulated carrier signal has no memory of what it communicated just as the voltage pulse has no memory of the logic 1 or logic 0.

Limiting the claimed “storage medium” to a carrier signal either explicitly (e.g. through the claims) or implicitly (e.g. via the specification) is not considered statutory under 35 U.S.C. 101. The language “modulated carrier signal” should be removed from the claims and specification. Section 2100 of the MPEP sets forth the following with respect to non-statutory language:

To properly determine whether a claimed invention complies with the statutory invention requirements of 35 U.S.C. 101, Office personnel should classify each claim into one or more statutory or nonstatutory categories. If the claim falls into a nonstatutory category, that should not preclude complete examination of the application for satisfaction of all other conditions of patentability. This classification is only an initial finding at this point in the examination process that will be again assessed after the examination for compliance with 35 U.S.C. 102, 103, and 112 is completed and before issuance of any Office action on the merits.

In keeping with MPEP an examination of all the claims, including claim 19 is presented.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over EFI Application Toolkit MP Protocol Specification in view of Goodman (Pat. Pub No. 2002/0091807).

The EFI Application Toolkit teaches the claimed “base node” as the base node BSP shown in figure 1. The claimed “at least one other node” corresponds to any of nodes AP. The claimed function “instructing...to start a process” corresponds to the function startprocessor() (page 4-11). The claimed step of “starting the process by each...node” corresponds to individual nodes AP executing a process/function. The claimed step of “reporting back results...to the base node” corresponds to nodes AP sending messages via message arrays (page 3-4). However, accessing a private (local) memory without rebooting is not discussed.

The present specification teaches that firmware is usually stored in private (local) memory of a multi-node processing system (see Background pp. 1-2). Goodman is

introduced for it's teaching of updating firmware stored in PROM (flash memory, EEPROM, etc.) within the nodes 20, 40, 60 and 80 shown in figure 1. A system wide update process of firmware can be delivered through a host system (i.e. boot processor), debug port (i.e. diagnostic node), or external interface located on one or more nodes (see col. 3, [0029]). The examiner contends Goodman's memory for storing firmware (i.e. PROM, EEPROM, flash memory) corresponds to the claimed "private memory." This memory is accessed and firmware stored therein updated at the request of the system wide update process. This system wide update process increases the likelihood that the same version of the firmware is running on all the nodes to avoid incompatibility problems (col. 1, [0010]). Other advantages stem from the system wide update as discussed in Goodman.

Noel is introduced as teaching a multiprocessor computer subdivided by software into multiple partitions (see Abstract). Multiple partitions running multiple instances of an operating system can be built on the system shown in figure 1. The partitions can be changed without rebooting the system by modifying the configuration tree (Abstract). Changing the memory allocation of fragments can be handled by an operating system instance modifying the configuration tree without the need for a reboot (see section [0286]). The configuration tree is stored in local address space (local/private memory) (see section [0070]) where it is altered. Any changes made to the configuration tree must be acted upon by each instance affected by the change (see section [0286]). Rebooting a partition is generally time consuming and reduces processing speed of the partitions.

Because the system wide update process of Goodman avoids incompatibility problems, it would have been obvious to use Goodman's firmware update scheme in the EFI Application in order to update firmware stored within each of the AP processors. Furthermore, Noel's process for updating/changing a configuration tree within the local/private memory of a CPU does so without rebooting the partitions. This saves time and increases operating speed. Therefore, the claimed invention would have been obvious to one of ordinary skill in the art at the time of the invention.

5. Applicant's arguments with respect to claim have been considered but are deemed to be moot in view of the new grounds of rejection.

6. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

7. A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should review the prior art not relied upon for its relevance to the instant claims.

**Any response to this final action should be mailed to:  
Box AF**

Under Secretary of Commerce for Intellectual Property and Director of the  
United States Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

**or faxed to:**

(703) 872-9306, (for Official communications intended for entry)

**Or:**

(703) 872-9306, (for Non-Official or Draft communications, please  
label "Non-Official" or "DRAFT")

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

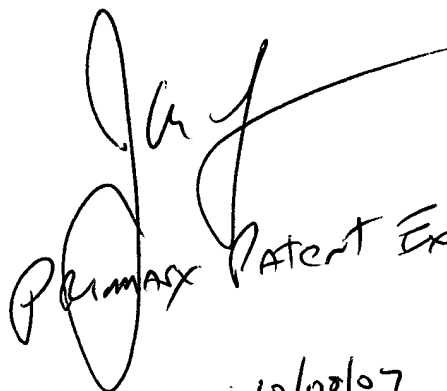
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack A. Lane whose telephone number is 703 305-3818. The examiner can normally be reached on Mon-Fri from 7:30AM-6:00PM.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 703 306-2903.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-3900.

  
Primary Patent Examiner  
10/08/07